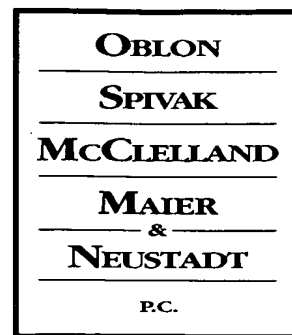




image
Docket No.: 217957US0

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313



RE: Application Serial No.: 10/033,781
Applicants: Kanemitsu YAMAOKA, et al.
Filing Date: January 3, 2002
For: METHOD FOR PRESERVING TUNA
Group Art Unit: 1761
Examiner: BECKER, D.E.

SIR:

Attached hereto for filing are the following papers:

Response to Restriction Requirement

Our check in the amount of -0- attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R. 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

Norman F. Oblon

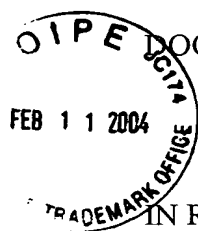
Registration No. 24,618

Customer Number

22850

(703) 413-3000 (phone)
(703) 413-2220 (fax)

Vincent K. Shier, Ph.D.
Registration No. 50,552



DOCKET NO: 217957US0

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF

KANEMITSU YAMAOKA ET AL

SERIAL NO: 10/033,781

FILED: JANUARY 3, 2002

FOR: METHOD FOR PRESERVING TUNA

:

: EXAMINER: BECKER, D.E.

:

: GROUP ART UNIT: 1761

RESPONSE TO RESTRICTION REQUIREMENT

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

Responsive to the Office Action dated February 3, 2004, Applicants elect, with
traverse, Group I, Claims 1-2.

REMARKS

The Examiner has required restriction in the above-identified application as follows:

Group I: Claims 1-2, drawn to a method of preserving tuna; and

Group II: Claims 3-4, drawn to a method of measuring gas.

Applicants have elected, with traverse, Group I, Claims 1-2.

Applicants note that the claims of Group II, depend from the claims of Group I, and as
such these groups should not be separated.

Restriction is only proper if the claims of the restricted groups are either independent
or patentably distinct. MPEP §803. The burden is on the Examiner to provide adequate

reasons and/or examples to support any conclusion of patentable distinctness between the restricted inventions. MPEP §803. Applicants respectfully traverse the Restriction Requirement on the ground that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between the claims of Groups I and II.

The Office has characterized the inventions of Groups I and II as unrelated. Citing MPEP §806.04 and MPEP §808.01, the Office concludes that “the different inventions are directed to a method of preserving tuna in Group I, and a method of determining carbon monoxide concentrations in Group II”. However, the claims of Group II, depend from the claims of Group I, and as such these groups are clearly related. Accordingly, the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement. Accordingly, Applicants respectfully submit that the Restriction Requirement should be withdrawn.

Applicants traverse the Restriction Requirement on the grounds that the Office has not shown that a burden exists in searching all the claims of the present application.

Moreover, MPEP §803 states as follows:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct or independent inventions.

Applicants submit that a search of all claims would not constitute a serious burden on the Office, particularly in view of the fact that the claims of Group II directly depend from the claims of Group I.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement. Withdrawal of the Restriction Requirement is respectfully requested.

Application No. 10/033,781
Reply to Office Action of February 3, 2004

Applicants respectfully submit that the above-identified application is now in
condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Norman F. Oblon
Attorney of Record
Registration No.: 24,618

Vincent K. Shier, Ph.D.
Registration No.: 50,552

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/03)